

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: WAWA, INC.
DATA SECURITY LITIGATION

CIVIL ACTION NUMBER:

2:19-06019-GEKP
And all related cases

STATUS CONFERENCE HEARING

JAMES A. BYRNE, U.S. COURTHOUSE
601 Market Street
Philadelphia, PA 19106
September 14, 2023
Commencing at 4:00 p.m.

B E F O R E: **THE HONORABLE GENE E.K. PRATTER**
 UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 THE COURTROOM DEPUTY: All rise.

2 (In open court at 4:19 p.m.)

3 THE COURT: Hello counsel, why don't you have a seat.
4 So we've got a status conference here, in the Wawa data breach
5 litigation, 19-6019. Just for the record, let's get you all to
6 identify yourselves.

7 MR. PLATT: Good afternoon, Your Honor, this is
8 William Platt for the plaintiff, McGlades.

9 MR. HAVILAND: Good afternoon, Your Honor, Don
10 Haviland from Haviland Hughes also for McGlades.

11 THE COURT: Good to see you both.

12 MR. HAVILAND: Good to see you.

13 MR. PARKS: Good afternoon, Your Honor, Gregory Parks
14 of Morgan, Lewis, and Bockius for the defendant, Wawa, Inc.

15 MS. HADGIS: Good afternoon, Your Honor, Kristin
16 Hadgis for defendant, Wawa.

17 MS. JIANG: Good afternoon, Your Honor, Yunica Jiang
18 also on behalf of Morgan Lewis for defendant, Wawa, Inc.

19 THE COURT: Okay, well, it's full employment here
20 today. What can I do for you all?

21 MR. HAVILAND: Well, Your Honor, from the notice that
22 we got, I know the initial notice was in chambers, now we're in
23 the courtroom. Happy to speak to the Court at any time we
24 asked for a conference. We have filed an opposition to the
25 summary judgment motion. I was pleased to see that the court

1 was able to release the under seal transcript because I had
2 forgotten that conversation a year ago in September, and I
3 remember saying to the Court, Boy, I don't want to have to do a
4 56(d) affidavit, I hope we're going to get to all that
5 discovery. And Your Honor may remember we were talking about
6 the schedule, can we compress it, and it was pretty well laid
7 out there that we had framed our request and they went to the
8 issues of other data breaches. In fact, we reigned the time in
9 to just the 26 days so clearly encompassed the two that caused
10 the 56(d) affidavit. And we were told by Wawa, and you said
11 don't be cagey, you're lawyers, let's get this done. We did
12 get some discovery in November. It was around that time when
13 my partner who did the affidavit was more familiar with the
14 timeline, but we didn't have all the documents and that's
15 really the point I want to make. And so as we discussed with
16 the Court, we noticed the depositions because we did take that
17 list that I said was 10 to 20, and we went down to nine. So we
18 noticed those depositions, and then we spoke with Morgan Lewis
19 and they said, well, why don't you just wait until you get the
20 documents, which was never unreasonable. When do we get the
21 documents and they said probably March. Well, of course, that
22 went a month past Your Honor's deadline.

23 THE COURT: Well, yeah, I mean, yeah. I'm constantly
24 reminding people that the discovery-related deadlines are
25 really, I don't really care about them, speaking of things I do

1 care about.

2 Have a seat.

3 MR. HAVILAND: Yes.

4 THE COURT: I wanted to make sure that particularly
5 plaintiff's counsel was aware of the fact that since this is
6 the new year, September -- speaking of which, by the way, I
7 know this is the start of a holiday, Rash Hashanah, at least
8 starting tonight, so I'm not going to keep anybody that might
9 be interested in that. But it's the start of the new year,
10 which means a new clerkship year, which means that I have new
11 law clerks. And I wanted to introduce you to the new law
12 clerk, who, in fact, worked at Morgan Lewis before he came
13 here. But never worked on this case. So I'm just making that
14 disclosure. I don't think it should be a problem, but if it
15 is, I'm sure you can let us all know at some point. But I
16 don't believe anybody would be able to -- I don't think there
17 was ever any interaction. And last time I checked I was told
18 that there are shockingly a thousand lawyers at ML&B.

19 No, no, no, 2,000 lawyers?

20 MR. PARKS: Correct, Your Honor.

21 THE COURT: How many employees all together?

22 MR. PARKS: Over 5,000, Your Honor.

23 THE COURT: Well, I don't know how Jaime keeps you
24 all --

25 MR. PARKS: She doesn't sleep much, Your Honor.

1 THE COURT: She sounded pretty good. She and I are
2 programmed together on something else. And the idea of having
3 to keep track of 2,000 lawyers is just horrifying, but at least
4 now there's one less.

5 (Laughter.)

6 THE COURT: The thing is, Michael is here with me.
7 But again, if there is an issue, you just let me know. Okay?
8 I didn't mean to interrupt. So we've got this -- as far as I
9 can tell, you want to file an amended complaint?

10 MR. HAVILAND: Well, that's a separate issue, Judge,
11 but that's really dovetail to the discovery that we've got that
12 we want to complete, so just a bottom line.

13 THE COURT: Well, does the discovery relate to the
14 idea of an amended complaint?

15 MR. PLATT: Yes, Your Honor, it does.

16 THE COURT: You may sit down during this conversation.

17 MR. PLATT: Your Honor, the discovery identified that
18 there were more than one -- so this case has all been about a
19 single data breach. The data breach of 2019 that they say
20 didn't affect our clients, the plaintiff employee class. We
21 have discovered through the discovery process, from documents
22 that came after the discovery deadline in March, that there was
23 in fact -- there were two other malware outbreaks at Wawa in
24 2016. Now our clients had their Social Security numbers
25 stolen. It wasn't a credit card case. It was a Social

1 Security number theft, which explains why there was Nordstrom
2 credit cards taken out in their name, there was a Verizon
3 account opened in their name. So we were never able to piece
4 that together, if it was just the 929 team data breach that
5 were skimming at gas pumps or credit card cases. We've now
6 come to learn after the close of discovery that there were two
7 non-remediated malware outbreaks. These are Wawa's words that
8 come from a gentleman by the name of Bruce who works for Wawa.
9 He acknowledges in the email, and I have the email with me,
10 that there were breaches. There were two of these outbreaks in
11 2016. That is what we want to add to our complaint because
12 given the posture of this case so far, it's always been about
13 2019. Our complaint was all about 2019 because in 2019 when
14 the data breach occurred, Wawa communicated to its employees
15 that there was a data breach. They never told about the 2016
16 breaches. They never told about 2018 breach. So my client
17 didn't even know about it when he explained the facts to us.
18 We had to read the paper. The paper told us there was a 2019
19 breach. Wawa admitted to a 2019 breach. They never told
20 anybody about the 2016 breach as far as we can tell until we
21 received the email. All we want to do is add the 2016 date. I
22 don't want to add any claims. I don't want to add any
23 additional parties. I don't want to add any additional counts.
24 I don't even want to add any facts outside of that.

25 THE COURT: So what's the point of adding 2016, if I

1 could be so ignorant?

2 MR. PLATT: Because I suspect that our adversary is
3 going to argue that the 2016 data breach incidents are not
4 relevant to this case because they've already made that
5 argument.

6 THE COURT: Again, why do you want to add them?

7 MR. PLATT: So we don't know enough about the 2016
8 breaches. We just know they existed. So we need to know what
9 they were, was it involving HR, which we believe it was. And
10 why didn't Wawa do anything about them or notify its employees
11 of the data breach as they are obligated to do. They have a
12 duty to their employees to protect their PII. They never told
13 anybody about it. So they were aware of the fact that they
14 were susceptible to attack as early as 2016, maybe earlier, we
15 don't know. But at least by 2016 they knew that they were
16 susceptible to attack. So like I said, the complaint as it's
17 drafted right now, as it's filed in its current form, deals
18 only with a 2019 credit card.

19 THE COURT: All I was asking was why do you want to
20 amend the complaint if you are saying that you don't know that
21 there's been any loss associated with 2016. I mean your --

22 MR. PLATT: Well, I guess it's because of this, Your
23 Honor --

24 THE COURT: You can always use it in discovery. Why
25 does it have to be -- or in your argument later if there were

1 to be a claim of ignorance or if somebody from Wawa gets on the
2 stand and says, oh, this is the first time it ever happened.
3 How could we possibly done anything to guard against it, bah,
4 bah, bah, bah, and then you get to do this. Makes the
5 cross-examination. But that's all putting the cart before the
6 horse. My question is what was the motion to amend the
7 complaint? Why do you need to amend? What is the point of
8 amending to include facts? I mean, everybody knows it's so
9 lovely that federal pleadings are supposed to be...

10 MR. PLATT: So, Your Honor, the reason why we wanted
11 to amend is if you look at the chronology of what happened in
12 this case, from the point where they refused to bring these
13 witnesses for depositions.

14 THE COURT: That's a different issue.

15 MR. PLATT: It's a related issue for the -- the reason
16 why we filed the amendment is because if it's not in the
17 complaint, they are already not producing the witnesses. If
18 they are not producing or if they are ordered to produce the
19 witnesses for deposition, they could certainly argue whether
20 there's merit to it -- I don't think there is -- that 2016 is
21 outside the scope of the complaint. Now if the Court would
22 allow us to take these depositions, which we hope you will, I
23 want it to be clear to the defendants to Wawa, that we can ask
24 questions about this 2016 malware outbreak. There are two
25 events in one month in the Summer of 2016. I just want to be

1 able to ask questions about --

2 THE COURT: Maybe what I should have done here is
3 start out with trying to figure out what's been going on in
4 discovery because it may be that that informs a little bit
5 about what's the idea behind the motion to amend the complaint.
6 So what I want to know from both of you all is there are three
7 related discovery issues, as far as I am concerned. As I read
8 the motion for relief under 56(b), that sounds an awful lot
9 like saying you want discovery to be quote, reopened, and so
10 that's kind of what seems to be all about. So I want to know
11 what's the employee responsiveness history for scheduling
12 depositions, number one.

13 Number two, what's the level of Wawa's cooperation or
14 not, of making its employees available for deposition? Have
15 there been -- is there any stridency or difficulty with
16 objections or instructions not to answer, et cetera.

17 And third, why was there a summary judgment motion
18 filed when the case management order seems to me at least to be
19 fairly clear that the parties have to meet and confer on
20 summary judgment after certification has been decided?

21 MR. HAVILAND: I'm happy to go to the last point, but
22 first, the employee response in this, Judge, is as follows: In
23 September 2022, we told the Court we'd like to have the
24 documents and there was a commitment to have those documents by
25 November, and the Court said why don't you schedule around

1 Christmas, we did that. We spoke to Wawa's counsel in January
2 about scheduling. It was at that point that they indicated
3 that they were not complete, the documents, didn't have a sense
4 of what it was going to be other than it would be March. So we
5 set dates, Judge, and we have a practice in our office that we
6 don't adjourn a date until we get a date. Well, that was
7 honored in the breach here because we weren't getting new dates
8 because the documents didn't come until March 24th, a full
9 five weeks after the cut-off. And then it became a problem of
10 just getting a commitment from Wawa's counsel to re-up those
11 dates and get those depositions. And of course, we got the
12 summary judgment motion, which added another whole layer.
13 There were 15 declarations added, 14 of which were employees,
14 most of whom have never been disclosed. So we then promptly
15 sent notices of those folks and it's at that point we were told
16 no. The discovery cut-off was February 17th, you get no
17 depositions. Not the December ones and not the April ones. No
18 deps, we're done, we're going to summary judgment. So we filed
19 56(d), Judge, because that's the only alternative. We can't
20 file a motion to compel. We're beyond the time period. And I
21 don't know how we got there to be frank with you, Judge, I
22 honestly don't. We thought we were talking in good faith about
23 getting to a point where we could schedule deps. So Wawa was
24 cooperative to a point until they told us we're filing summary
25 judgment and that's the way it's going to be. You won't get to

1 ask these folks questions. Take it or leave it. Why they
2 didn't meet and confer? I don't know. We were surprised as
3 anyone when we were briefing class to get a summary judgment
4 motion, and then given 14-days to respond, which is a really
5 short window of time when you are busy. But that's the answer
6 to your three questions, Judge.

7 THE COURT: Okay.

8 MR. PARKS: Not surprisingly we have a very different
9 view of that. We start, I think, in the same place, which is
10 in January we agreed that there was still documents to be
11 produced and so the agreement was we would produce those
12 documents, we would give them a date by which we were going to
13 produce the documents. We did that. We said we'll produce the
14 documents by March 24, and then after that date, we would then
15 have the depositions of Wawa people and the employee
16 plaintiffs. We did that. We met that deadline. We produced
17 the documents by March 24. Then on March 27, we sent
18 plaintiffs an email saying, okay, we've produced the documents,
19 I imagine it might take you a couple of weeks to read them and
20 figure out what you want to do. Let us know when you want to
21 take the depositions. And that was Exhibit 2 to our response
22 to the motion for relief at docket 385.3. We said when would
23 you like to take the depositions? We didn't hear back. We
24 never, ever got a response to that email. Never got an email
25 after that until the end of May saying anything about

1 depositions. And then shortly after, about a week after, we're
2 putting together the joint status report for the Court that was
3 due on April 3rd, and the employee plaintiffs took the position
4 that the only deposition and the only discovery left to be done
5 was their discovery of Wawa. They took the view that suddenly
6 they were not going to allow the depositions of the named
7 plaintiff employees and that's clearly stated in the April 3rd
8 letter that Your Honor received from the parties that that was
9 their position. Then, later in April, we sent Mr. Haviland an
10 email asking him to complete some things for discovery that we
11 wanted related to that particular depositions. And
12 Mr. Haviland wrote back, and in the email that is Exhibit 5 to
13 our response, Mr. Haviland took the very clear position that
14 discovery was over. So it was not Wawa who said the discovery
15 was over first. It was the plaintiffs who first reneged on the
16 deal that said there were going to be depositions of both
17 parties. They said nope, you don't get depositions of our
18 plaintiffs. So they reneged on the deal. And then secondly
19 they said on an email from Mr. Haviland, April 26, 2023, at
20 6:53 a.m. in the morning he says, discovery is over, the Court
21 has not ruled on our motion to extend the discovery deadline
22 and so you, Wawa, must cease and desist from all -- used those
23 words -- cease and desist from discovery in this case. And so
24 we did. And we took the position then, okay, fine. If you're
25 taking the position that discovery is over, we're ready to file

1 our motion for summary judgment, which we were.

2 In terms of what was in the case management order
3 about meeting and conferring, Your Honor made it very clear at
4 the September 2022 conference that that was a deadline past
5 which summary judgment could not be filed, but it was not
6 preventing us from filing anything. And Your Honor very
7 clearly said to my colleagues, Mr. Church and Ms. Hadgis,
8 because I wasn't there at that particular conference, but Your
9 Honor very clearly said in September of 2022, "Nobody is
10 keeping you from filing anything as to a motion for summary
11 judgment. I don't like setting dates for when summary
12 judgments are due because it's human nature, you might just
13 want to file it tomorrow. If you got a legal issue that you
14 could tee up, I'm not going to handcuff or delay you on that."

15 And then Your Honor also said, "It remains to be seen
16 later if there has to be a date for a cut-off, after which
17 there could not be a summary judgement motion filed." So that
18 date in CMO-10, Your Honor very clearly told us that September
19 of 2022 was a deadline beyond which it couldn't be filed, but
20 there was no reason why it couldn't be filed earlier, and we
21 did take Your Honor up on the offer to file it earlier.

22 THE COURT: Fair enough. Just so that nobody is
23 unnecessarily agitated on the summary judgment, it is my
24 practice, sadly, that whenever summary judgment is filed in any
25 care, whether it's because of a hard deadline or a soft

1 deadline or it's just been filed, when some case lives beyond
2 the time period of a filing of a motion, I always allow
3 supplemental material either by the movant or whatever. If
4 there were to be a request from the plaintiffs for relief from
5 having to file a response at this moment to the summary
6 judgment motion, I would be inclined to grant it because I
7 would be inclined to at some point there will be an end to
8 discovery, whether it's an end that you would agree to or
9 because I just, I don't think you're having fun anymore. Then
10 no one will be allowed to supplement to bring things to the
11 most current basis with summary judgment and the facts on the
12 record, and then there will be a deadline and due date for the
13 plaintiff to respond. So don't get yourselves in a swivet
14 about the status of summary judgment. With one exception and
15 that is, I don't know what the declarants have said or what the
16 affidavits might say that were submitted in support of the
17 motion. One might think that they, that the declarants are the
18 type of people whose names should have been disclosed as part
19 of self-executing discovery as being knowledgeable about
20 something, in which a, the opponent then typically knows enough
21 to say, "I better depose these people." And if they don't,
22 then that's on them, okay? But if they were never previously
23 identified as knowledgeable, then it becomes a little tougher
24 to say that the plaintiff doesn't get some opportunity to
25 question these folks who now presumably know something because

1 otherwise they wouldn't be declarants on summary judgment.

2 MR. PARKS: Your Honor, the people who were not
3 previously disclosed -- let me back up. The fact witness, the
4 one witness who in our summary judgment motion said here's the
5 way our system works and here's the evidence, all of that, who
6 was the technical person. That person was disclosed in our
7 self-executing disclosures. Everybody else who put in
8 declarations were members of the class. They were rank and
9 filed Wawa employees who work at stores and who said, "I wasn't
10 hurt by this data breach." And so those are the people that,
11 you know, it's not surprising to the plaintiffs that those
12 people existed. They are class members. They are the people
13 they claim to represent. So the notion that those people are
14 out there and exist is not a surprise, and they weren't really
15 coming forward with facts about the merits of the case or about
16 the data breach or what they call multiple breaches or anything
17 else. They were just saying, "Look, I'm in a different
18 position than that person is," and they were perfectly aware
19 that those people existed and were out there.

20 THE COURT: Well, if they are class members, then
21 what's the basis on which one might, from a defense standpoint,
22 object to them being deposed or meeting with counsel?

23 MR. PARKS: No objection to them meeting with anybody
24 as to those people. The depositions would just be that, again,
25 the plaintiffs' lawyers reneged on the deal to extend the

1 discovery deadline to do depositions and then took the position
2 that discovery was over. And having taken the position that
3 discovery was over, it was our position that, okay, if
4 discovery is over, then it's over for everybody. You can't
5 have one way discovery.

6 THE COURT: As I may have expressed to you all in the
7 past, I'm a huge fan of the goosey gander rule.

8 MR. PARKS: I agree.

9 THE COURT: If it's good for the goose, it's good for
10 the gander. So if there's more discovery, then there's more
11 discovery for everybody.

12 MR. HAVILAND: I want to say Mr. Parks ended with
13 there was an effort to communicate to the Court before the
14 close of discovery that we wanted more time. It was a joint
15 motion and that's well set out in the papers.

16 THE COURT: Yes, but guess what? If you both want
17 something and it's discovery, you do not have to come to the
18 Court.

19 MR. HAVILAND: Understood.

20 THE COURT: I don't know how many ways there are to
21 say that.

22 MR. HAVILAND: We were proceeding on that view in
23 February, Judge. Where it's five weeks later we get documents
24 and then weeks later we get the privilege log, which I actually
25 tried to print just the portion that relates to the Verizon

1 folks. So they have something called a Verizon privilege, and
2 I had to go and check because I've been out of law school for a
3 while, I didn't know there was one. But I do know that the
4 Middle District of Pennsylvania ruled in the Rutter's case that
5 if you have a forensic somebody and you're going to get them to
6 go find answers, then you'd better produce the report and the
7 backup to it.

8 Well, counsel for Wawa constantly told us the Verizon
9 report gives you all you need. Well, we want to see the backup
10 to what the engagement, the communications, and all that the
11 case law gives us and we didn't get that. So we didn't get off
12 the dime, if you will, on the documents when all this was given
13 to us in April. And where we fell apart, I believe, is because
14 Wawa started saying, well, the McGlades have to produce stuff.
15 And let me just make a quick point. They never asked for the
16 deposition of McGlades. There was never a notice. We expected
17 one but we didn't get one. So I just want to point that out.
18 But they kept saying the McGlades haven't produced enough. And
19 my partner, who would like to speak to it, but I said I'll
20 handle it.

21 The McGlades only have what the McGlades have. They
22 want to do a forensic investigation of this couple and their
23 home commuter. And we resisted that. And that was the motion
24 to compel Your Honor ruled upon. So I agree with one thing.
25 We fell apart in April because we weren't getting dates. It's

1 not for us to propose dates, Judge. We asked, we asked, we
2 asked. And Wawa rightly said, especially as to the former
3 employees that we discussed with Your Honor last year, I can't
4 go out and subpoena Mr. Caramenico when Wawa says they
5 represent him and they will produce him. So the obligation to
6 say okay, this executive is available here and now, will you
7 take them; was on them. And here we are now because they filed
8 summary judgment and I, too, have the transcript where I said
9 Judge, I would hate to say 56(d) because they didn't put these
10 witnesses up and then I get 15 more declarations of folks who
11 are not under Rule 26 who are apparently not my clients that I
12 can speak to. Well, I wish I had known that before Mr. Parks
13 said that because I would have called them up. But they do
14 take positions about the merits in the case. They say the
15 McGlades are wrong. They say the position is stayed in the
16 case is wrong. And yeah, they say they weren't harmed but they
17 didn't know about 2016 or did they. They are the questions
18 that I would like to ask them in less than an hour. And we
19 would like to take those depositions very serially over the
20 course of a couple of days so that we don't have the issue
21 of --

22 THE COURT: Have you asked about setting them up?

23 MR. HAVILAND: We have, Judge.

24 THE COURT: And the answer was what?

25 MR. HAVILAND: We are not getting any deposition

1 dates, period. Period.

2 MR. PARKS: To be clear, that was after the sauce rule
3 was violated. That was after Mr. Haviland said to me,
4 discovery is over, no, we're not doing discovery with the court
5 having not ruled. So that was the position that Mr. Haviland
6 took. I was willing to continue to do discovery even though
7 Your Honor hadn't ruled on that yet, consistent with what Your
8 Honor said today, discovery deadlines, the parties can agree,
9 we're going to continue doing discovery. Mr. Haviland flatly
10 refused, said we're not doing discovery anymore. And as a
11 result, when he comes to me and asks, hey, can I depose these
12 employees, of course the answer is no because he's already
13 taken the position that discovery was over.

14 MR. HAVILAND: I understand the sauce rule, the sauce
15 is if they wanted the McGlades, asked for the McGlades and I
16 would have given them the McGlades. They never asked. What
17 they did say is the McGlades have not done enough, we could not
18 come to an agreement on that and they filed a motion. And so
19 as far as documents go, that's the status of the record, file a
20 motion. And that only came after many mean confers between our
21 firms say, you can't get blood from the stone from this couple.
22 They've given you what they have on this. They went out and
23 subpoenaed the vendors so they got -- but I can't give what
24 they don't have. And there was no sauce on a refusal to give
25 deposition because they didn't ask. I did ask many times

1 starting in December, can I have these nine executives? Can I
2 have these declarants? And it was no. No date. I'm willing
3 today, Judge, to give them a date for McGlade. We'll go out
4 and call them. I just want to get the depositions. We've
5 gotten no depositions and we talked last September about, maybe
6 about 12. And we got it to nine. We weren't even within the
7 rule limit of 10. But you know, December went to January, went
8 to February.

9 THE COURT: The rule is guidance.

10 MR. HAVILAND: And I understand Your Honor's comment.
11 I think you said it was your rule. It's a guide rule.

12 THE COURT: It's not my rule. I didn't get it from
13 the start. The minute you put numbers in there then you
14 develop a cottage industry and everybody is going to have a
15 fight on how you count to ten. If you got fingers and toes how
16 do you count to ten. I really find them sort of -- these rules
17 give the vibe to the notion that you all are professionals.

18 MR. HAVILAND: So I think, Judge, getting to the
19 bottom line, as I'm sure you want to do on this late hour here,
20 we'd just like to get a discovery dep. We're a year past the
21 time where we thought --

22 THE COURT: Have you thought about this? Have you
23 actually thought about writing on one piece of paper -- I'm
24 very fond of using one piece of paper -- what it is you want
25 and put it in a type sized, legible, no footnotes, no first --

1 one side of the paper, just normal-sized margins. And then
2 what you both want and then you exchange it and then you say
3 well, okay, I'll give you one, three, and five but not two,
4 four, and seven, and here's why. And then we'll go from there.
5 I can't really deal with this in a squishy sort of way.

6 MR. HAVILAND: Sure. Judge, docket 37417 in our
7 proposed order and it has five things in it. And it says can
8 we get these documents? Can we get the Verizon documents
9 without a privilege of Verizon? Can we get the depositions
10 including the declarants? 1, 2, 3, 4, 5. It goes to page two.

11 THE COURT: Just to be fair does it say the declarants
12 in line 9 and 5 is really how many people? How many
13 declarants?

14 MR. HAVILAND: There's probably 12 of the 14 because
15 two have already been -- 11 or 12 declarants.

16 Judge, there are employees who filed a two-page
17 affidavit saying all the things that they knew but not the
18 things they didn't know. That's a 20 to 30-minute deposition
19 to understand what they didn't know. It's a form of affidavit
20 seems to be put together by counsel. There's people that
21 didn't sign it right, there are people that didn't date it
22 right. It doesn't even look like they understood it sometimes.

23 THE COURT: Well then, by all means what you want to
24 do is bring them in so they can correct all of that.

25 MR. HAVILAND: I just want to know who's showing up,

1 Judge. If they are going to show up. Because if this case
2 goes to trial, and it likely will if we don't go any further in
3 our discussions, it's going to have to be who's showing up.
4 And if you're going to bring class members who happen to be
5 employed by the defendant, I just want to know about it, that's
6 all. I can cross-examine at trial, but I want to know if these
7 are the folks that are coming, then I'll probably want to take
8 their deposition before trial because they weren't in the 26th
9 disclosure.

10 THE COURT: Well, they are part of your class, I
11 guess.

12 MR. HAVILAND: Well, it's punitive class, Judge, they
13 haven't stipulated, but yeah, I guess that's right.

14 THE COURT: I mean, they were part of your proposed
15 class.

16 MR. HAVILAND: That's right. And I'm happy to contact
17 them now that I know that I can, if they are not represented by
18 Wawa.

19 THE COURT: Well, you might want to have a discussion
20 on that.

21 MR. HAVILAND: I certainly will, Judge.

22 THE COURT: Just so it doesn't turn into another
23 fight.

24 MR. HAVILAND: Absolutely.

25 MR. PARKS: Your Honor, I think the problem with the

1 list of things they want is it includes they want production of
2 privileged documents that we objected to producing. As early
3 as November of 2020 we asserted that objection. We gave
4 privileged logs in 2022 and again in early 2023, and the
5 plaintiffs' lawyers never did anything with that. They never
6 met and conferred with us. They never filed a motion to
7 compel. They didn't do anything else. I think it's too late
8 on the documents. If we want to get somewhere on depositions,
9 I understand that, maybe that's a place we can go. But I think
10 at this point we bent over backwards, did everything we could
11 in relation to production of documents. We spent a lot of time
12 and money doing it, and then afterwards we find out in June, by
13 the way, they want these additional things when we believe we
14 finished our document production in March and really finished
15 most of it in November.

16 MR. PLATT: Judge, at that hearing last year --

17 THE COURT: I'm going to cut through all of this. My
18 addition to you all for you to think about is that, as far as I
19 am concerned, you all should agree to reopen discovery as to
20 anything that cannot be connected to some previous disclosure
21 that is specific, okay? If there was -- so if there was a
22 non-disclosure of identifying a witness as being knowledgeable
23 before sometime as the quote, close of discovery or the date
24 that we had originally, then you ought to reopen and allow that
25 deposition. If a document is -- if there's a follow-up demand

1 for documents, but it's key to something that was already
2 disclosed by the defendant, then I don't quite understand why
3 that shouldn't have been requested long ago. And why should
4 that be a renewed item? So what I'm trying to --

5 MR. HAVILAND: Judge, the concern I have with that is
6 Mr. Reuss, who my partner just spoke to, who is one of the
7 critical folks, has now filed two declarations. The one in
8 support of summary judgment takes very strong positions about
9 whether or not there was a compromise. The late-produced
10 documents that didn't come prior to the deposition schedule
11 that we had scheduled and we didn't get a date on --

12 THE COURT: Well, that means that you can just, just
13 by your request.

14 MR. HAVILAND: I'm just being clear that I don't --

15 THE COURT: I am not going to spend the rest of this
16 afternoon talking about these things in a vacuum. If
17 there's -- what I really want you to do is step back and say is
18 this particular dispute worth a candle? By this dispute,
19 meaning this squabble about a particular item of discovery. If
20 it is, great, but give me the chapter and verse as to why it
21 should have been asked for before or why it wasn't. Whatever
22 your justification is, if it passes your personal laugh test,
23 then you can give it to me as your explanation to the discovery
24 issue. But what I want you to do is step back, shorten your
25 list or expand your list, whatever, so that you're really down

1 to what you need because there's going to be a class
2 certification hearing here, and it's going to be sooner than
3 later. As I said, don't get all hot and bothered about the
4 summary judgment because I'm going to handle that the way I
5 did. But I think there's been -- I'm still not sure, except
6 for the notion of wanting to avoid unnecessary fights about
7 discovery. I'm still not feeling a compulsion on amending the
8 complaint. Although I do understand what you are saying about
9 if you were to ask a witness, was there ever any earlier data
10 breach at Wawa that you're aware of and the answer is, don't
11 answer that because nothing before 2000--and, you know, whatever
12 is pertinent, I get that. That, I think, is a fair question on
13 the notion of is there something that Wawa could and should
14 have done to protect against what happened. And a way of
15 making that argument is to show that Wawa had, you know, its IT
16 department was in a swivet about something a couple years
17 earlier. You're entitled to find out that but not beat that
18 horse to death. But if they are not going to interfere with
19 that question, then I don't get what amending the complaint is
20 all about.

21 MR. HAVILAND: I think you just resolved it, Judge, by
22 your colloquy there. We just don't want to be put in that
23 situation.

24 THE COURT: That was a rational explanation.

25 MR. HAVILAND: My answer is 19. Now we know it's

1 broader and we just want to ask the questions.

2 THE COURT: You may or may not know it's broader and I
3 don't know how you know this. But I'm just giving some
4 off-the-cuff guidance here so that everybody knows where it
5 might be or where it might end up. But there's going to be an
6 end to this. You ever watch -- what's the movie where Rex
7 Harrison plays the part of the Pope and Charlton Heston is
8 Michelangelo, who comes into the Sistine Chapel and says when
9 are you going to be done and Michelangelo says, "When I'm
10 done". I'm getting to feel a little Rex Harrison-ish. There
11 must be an end to this.

12 MR. PARKS: I certainly agree with that, Your Honor.
13 I think the rule the Court has laid out of perhaps there should
14 be a reopening of discovery as to anything that was disclosed
15 after the original discovery deadline of February 17, 2023,
16 makes some sense.

17 THE COURT: I mean, like, don't tell me that something
18 was -- a truckload backed up on the day before discovery was
19 done. You know what I'm saying?

20 MR. PARKS: Absolutely, Your Honor.

21 MR. PLATT: Your Honor, can I just ask for a point of
22 clarification?

23 THE COURT: Yeah.

24 MR. PLATT: So the history of this discovery
25 dispute -- and I'm only asking because I am really trying hard

1 to avoid discovery disputes in front of the Court. I really,
2 really do. I'm very successful at it. Frankly, until this
3 week, when I had another one in Illinois on Tuesday, and then
4 it fell apart and it worked out well for us, and now this. And
5 I don't have anything negative to say about opposing counsel;
6 it's been a very friendly and professional back-and-forth, but
7 it's critical to note that the plaintiffs noticed these
8 depositions in December, three months, two months before the
9 original discovery deadline closed. The defendants never
10 asked, never noticed. We didn't just ask for a deposition, we
11 noticed them under the rules. We didn't receive a notice of
12 deposition for either one of the McGlades, ever, to date.

13 THE COURT: Maybe they don't care what your people are
14 going to say.

15 MR. PLATT: I don't know if that's the case or not,
16 but I just want to be clear that I don't want to be punished
17 because we made a deal that the depositions were going to be
18 scheduled after the discovery deadline when they didn't give us
19 dates. That's all I'm saying. We properly noticed them.

20 THE COURT: Do you really want to fall on that sword?
21 That if you agreed that you were going to produce your people
22 and it didn't matter when, I mean, what's the point of saying,
23 "you didn't give me a date."

24 MR. PLATT: No, no, no. We asked for dates. And we
25 asked for dates after we asked for dates. And then we asked

1 for dates again and then counsel indicated to the Court that we
2 didn't respond to an invitation for dates, that's not accurate.

3 MR. PARKS: That's a hundred percent accurate.

4 March 27th email was absolutely never responded to.

5 And if you have it, I would love to see it.

6 MR. PLATT: I will email it to you.

7 MR. HAVILAND: Judge, in the interest of closing, I
8 want to --

9 THE COURT: See this lady up there? How many hands
10 does she have?

11 MR. HAVILAND: I'm watching her.

12 THE COURT: And how many transcripts is she creating?

13 THE COURT REPORTER: Thank you, Judge.

14 THE COURT: One of the reasons we're in the courtroom
15 with a court reporter is because it does, it's supposed to give
16 you the visual of speaking one at a time. But let me, I'm
17 going to just give you, I'm going to confess something to you.
18 I do not keep track of who struck John and when, unless I'm the
19 John who got struck. So the fact that somebody wrote an email
20 and you did or didn't answer or it wasn't an answer or it was
21 sent at 11:59 before the strike of midnight, I don't keep track
22 of that too much, especially when it's back and forth like
23 this. I get a sense of, you know, the acrimony or whatever,
24 but I don't really keep track of it. My life is too short for
25 that. And I don't get to put it on a time sheet anymore.

1 MR. HAVILAND: The one thing we'd like to see closed
2 out on, Judge, on the paper record is when there was a
3 commitment to produce, Your Honor said let's not hide the ball,
4 let's not be cagey. You said and I'm glad you said it because
5 it's something that we always look for as plaintiffs to end it.
6 Have somebody sign off in an enforceable way that there's
7 nothing more. And that's on page 18 at line 20. And I said,
8 Judge, I don't want to do a 56(d) so I appreciate what you just
9 said. I just want to know there's no "there" there, because at
10 the end of the day they are going to come before the Court and
11 say it didn't happen. What the McGlades say happened.

12 THE COURT: What is the issue we're talking about on
13 this?

14 MR. HAVILAND: I want the document production to be
15 certified that they have completely produced as the requests
16 we've asked. That's all. That's what we thought we walked out
17 in September with.

18 THE COURT: Excuse me for interrupting. I thought
19 there was an issue that there was no more requests and when is
20 that going to end?

21 MR. HAVILAND: So we did propound class requests in
22 January, but the requests that we discussed last year, and they
23 are Exhibits A and B to Mr. Platt's declaration, were served in
24 March and August of '22 so we met with the Court in September.
25 The request about other data breaches, they were in March.

1 They were already six months old. So we were waiting. And in
2 fairness, Judge, we had another party; the banks were involved
3 at that time. Obviously, they were in discussions and came
4 forward with the settlement in March of this year, so there was
5 that overlay which obviously adds some complexity to our
6 getting clarity about whether we're getting what we want.

7 THE COURT: Okay. I am sure that there's something
8 important in what you just told me, but I'm not sure I
9 understand what it is.

10 MR. HAVILAND: We had asked for all the information
11 about these prior breaches in '16 and '18 and I just want to
12 know that we got it.

13 THE COURT: What I'm going to say is and therefore
14 what?

15 MR. HAVILAND: We have a production, okay? And in
16 this interest of not making an issue, if the production is
17 complete, then we're done. And you can go and ask questions
18 and be done and that will be that.

19 MR. PARKS: It is complete, Your Honor. We said that
20 in our March 27, 2023 email, "Don and Bill, we are writing to
21 let you know that our production is now complete." That's the
22 very first sentence of Mr. Hadgis' email.

23 MR. HAVILAND: So I take that as the enforceable
24 writing.

25 THE COURT: As an officer of the court, he is

1 representing his client. We now have a court reporter who's
2 got it on the record. How many other bows and bells do you
3 want?

4 MR. HAVILAND: It's bowed up.

5 THE COURT: Anything else we can talk about?

6 MR. HAVILAND: Talk about the Eagles up and down the
7 city.

8 THE COURT: Oh, please.

9 MR. HAVILAND: It was very hard to get down here.

10 THE COURT: Oh, is it already getting crowded?

11 MR. HAVILAND: Your Honor, I had a meeting in the
12 great Northeast where I grew up and there was only one lane and
13 it was an hour and a half just getting off of Girard.

14 THE COURT: How many people can get into this city?

15 MR. HAVILAND: Apparently 70,000 from 2:00. It's
16 quite a parking lot out there.

17 THE COURT: Okay, we're done.

18 (Discussion held off the record.)

19 (Matter adjourned at 5:05 p.m.)

20 - - - - -

21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23 /S/ Maureen McHugh, RPR
24 Official Court Reporter

25 October 10, 2023
Date

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